

(i) The end of the fifth business day following the day of execution for the period from the effective date of this section to August 31, 2013;

(ii) The end of the third business day following the day of execution for the period from September 1, 2013 to August 31, 2014; and

(iii) The end of the second business day following the day of execution from and after September 1, 2014.

(8) For purposes of paragraph (a)(3)(ii) of this section, each swap dealer and major swap participant shall establish, maintain, and follow written policies and procedures reasonably designed to ensure that it executes a confirmation for each swap transaction that is or involves an equity swap, foreign exchange swap, or other commodity swap that it enters into with a counterparty that is not a swap dealer, major swap participant, or a financial entity not later than:

(i) The end of the seventh business day following the day of execution for the period from the effective date of this section to August 31, 2013;

(ii) The end of the fourth business day following the day of execution for the period from September 1, 2013 to August 31, 2014; and

(iii) The end of the second business day following the day of execution from and after September 1, 2014.

(9) For purposes of paragraph (c) of this section:

(i) “Credit swap” means any swap that is primarily based on instruments of indebtedness, including, without limitation: Any swap primarily based on one or more broad-based indices related to instruments of indebtedness; and any swap that is an index credit swap or total return swap on one or more indices of debt instruments;

(ii) “Equity swap” means any swap that is primarily based on equity securities, including, without limitation: Any swap primarily based on one or more broad-based indices of equity securities; and any total return swap on one or more equity indices;

(iii) “Foreign exchange swap” has the meaning set forth in section 1a(25) of the CEA. It does not include swaps primarily based on rates of exchange between different currencies, changes in such rates, or other aspects of such

rates (sometimes known as “cross-currency swaps”);

(iv) “Interest rate swap” means any swap which is primarily based on one or more interest rates, such as swaps of payments determined by fixed and floating interest rates; or any swap which is primarily based on rates of exchange between different currencies, changes in such rates, or other aspects of such rates (sometimes known as “cross-currency swaps”); and

(v) “Other commodity swap” means any swap not included in the credit, equity, foreign exchange, or interest rate asset classes, including, without limitation, any swap for which the primary underlying item is a physical commodity or the price or any other aspect of a physical commodity.

[77 FR 55960, Sept. 11, 2012]

§ 23.502 Portfolio reconciliation.

(a) *Swaps with swap dealers or major swap participants.* Each swap dealer and major swap participant shall engage in portfolio reconciliation as follows for all swaps in which its counterparty is also a swap dealer or major swap participant.

(1) Each swap dealer or major swap participant shall agree in writing with each of its counterparties on the terms of the portfolio reconciliation.

(2) The portfolio reconciliation may be performed on a bilateral basis by the counterparties or by a qualified third party.

(3) The portfolio reconciliation shall be performed no less frequently than:

(i) Once each business day for each swap portfolio that includes 500 or more swaps;

(ii) Once each week for each swap portfolio that includes more than 50 but fewer than 500 swaps on any business day during any week; and

(iii) Once each calendar quarter for each swap portfolio that includes no more than 50 swaps at any time during the calendar quarter.

(4) Each swap dealer and major swap participant shall resolve immediately any discrepancy in a material term of a swap identified as part of a portfolio reconciliation or otherwise.

(5) Each swap dealer and major swap participant shall establish, maintain,

and follow written policies and procedures reasonably designed to resolve any discrepancy in a valuation identified as part of a portfolio reconciliation or otherwise as soon as possible, but in any event within five business days, provided that the swap dealer and major swap participant establishes, maintains, and follows written policies and procedures reasonably designed to identify how the swap dealer or major swap participant will comply with any variation margin requirements under section 4s(e) of the Act and regulations under this part pending resolution of the discrepancy in valuation. A difference between the lower valuation and the higher valuation of less than 10 percent of the higher valuation need not be deemed a discrepancy.

(b) *Swaps with entities other than swap dealers or major swap participants.* Each swap dealer and major swap participant shall establish, maintain, and follow written policies and procedures reasonably designed to ensure that it engages in portfolio reconciliation as follows for all swaps in which its counterparty is neither a swap dealer nor a major swap participant.

(1) Each swap dealer or major swap participant shall agree in writing with each of its counterparties on the terms of the portfolio reconciliation, including agreement on the selection of any third-party service provider.

(2) The portfolio reconciliation may be performed on a bilateral basis by the counterparties or by one or more third parties selected by the counterparties in accordance with paragraph (b)(1) of this section.

(3) The required policies and procedures shall provide that portfolio reconciliation will be performed no less frequently than:

(i) Once each calendar quarter for each swap portfolio that includes more than 100 swaps at any time during the calendar quarter; and

(ii) Once annually for each swap portfolio that includes no more than 100 swaps at any time during the calendar year.

(4) Each swap dealer or major swap participant shall establish, maintain, and follow written procedures reasonably designed to resolve any discrepancies in the material terms or valuation

of each swap identified as part of a portfolio reconciliation or otherwise with a counterparty that is neither a swap dealer nor major swap participant in a timely fashion. A difference between the lower valuation and the higher valuation of less than 10 percent of the higher valuation need not be deemed a discrepancy.

(c) *Reporting.* Each swap dealer and major swap participant shall promptly notify the Commission and any applicable prudential regulator, or with regard to swaps defined in section 1a(47)(A)(v) of the Act, the Commission, the Securities and Exchange Commission, and any applicable prudential regulator, of any swap valuation dispute in excess of \$20,000,000 (or its equivalent in any other currency) if not resolved within:

(1) Three (3) business days, if the dispute is with a counterparty that is a swap dealer or major swap participant; or

(2) Five (5) business days, if the dispute is with a counterparty that is not a swap dealer or major swap participant.

(d) *Reconciliation of cleared swaps.* Nothing in this section shall apply to a swap that is cleared by a derivatives clearing organization.

(e) *Recordkeeping.* A record of each swap portfolio reconciliation consistent with § 23.202(a)(3)(iii) shall be maintained in accordance with § 23.203.

[77 FR 55960, Sept. 11, 2012]

§ 23.503 Portfolio compression.

(a) *Portfolio compression with swap dealers and major swap participants—(1) Bilateral offset.* Each swap dealer and major swap participant shall establish, maintain, and follow written policies and procedures for terminating each fully offsetting swap between a swap dealer or major swap participant and another swap dealer or major swap participant in a timely fashion, when appropriate.

(2) *Bilateral compression.* Each swap dealer and major swap participant shall establish, maintain, and follow written policies and procedures for periodically engaging in bilateral portfolio compression exercises, when appropriate, with each counterparty that